

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 28-950649

**Controlled Substance Excise Tax
For The Period: 1994**

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ISSUES

I. Controlled Substance Excise Tax—Liability

Authority: IC 6-7-3-5; IC 35-48-4-11

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer and four other people were arrested for possession of marijuana on October 9, 1994. The police went to an apartment to serve a failure to appear warrant to a party (referred to here as "M"). While inquiring about M, they observed some marijuana. The police then obtained a search warrant. After entering the apartment, the police found 38.3 grams of marijuana. The other people arrested included two relatives of M, another person, and the taxpayer—the girlfriend of one of M's relatives. After being contacted about the arrests, the Department issued a jeopardy assessment notice for the taxpayer in November of 1994. In October of 1995, the taxpayer pled guilty to assisting a criminal.

I. Controlled Substance Excise Tax—Liability

DISCUSSION

In Indiana, under the Controlled Substance Excise Tax (CSET), the manufacture, possession or delivery of marijuana is taxable. IC 6-7-3-5. Indiana law specifically provides that notice of a proposed assessment is *prima facie* evidence that the

Department's claim for the unpaid tax is valid. The taxpayer then bears the burden of proving that the proposed assessment is wrong.

The taxpayer argues that she did not live at the residence where the marijuana was found. She states that she lived with her mother, who lived nearby, and that her only connection to the residence was that her boyfriend lived there. On November 5, 1998, an arresting officer (from October 9, 1994) was contacted by the Department and questioned as to the taxpayer's claim that she did not live at the residence. The officer stated that the taxpayer had mail at the apartment, but that the mail did in fact have her mother's address on it. However, the officer did state that he found some of the taxpayer's items at the residence—namely, her clothes and some of her beauty supplies. The officer said that the taxpayer stated that she only stayed at the apartment occasionally, but that she lived with her mother.

The crux of the matter is whether or not the taxpayer possessed the marijuana. The taxpayer argues: (1) that she did not exercise any control over the marijuana, that she did not have actual possession (it was not found on her, or among any personal items she had left at the residence—it was not in the immediate physical control of the taxpayer); (2) that it was not her apartment where the marijuana was found.

FINDING

The taxpayer's protest is sustained.